
Remarks / Arguments & Status

The application presently contains the following claims:

<i>Independent Claim #</i>	<i>Dependent Claim #s</i>
1	
2	3-15

Claims 1-15 were examined by the examiner. Claims 1-15 are amended within this Amendment Response. No claims are newly added. Claims 2 and 9 were amended to correct the antecedent basis within the claims. Claims 1-15 were amended to limit the claims to a topical composition. Claim 2 was amended such that the claim is directed towards a topical composition containing the extract of the seed of a lotus plant and the extract of the flower of a lotus plant. Support for this amendment can be found at page 11 of the application.

35 U.S.C. §112 Rejection & Responsive Arguments

The examiner has rejected claims 2-8 under this section, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner represents that there is insufficient antecedent basis for the limitation in Claim 2 of "the Yellow Lotus", "the Blue Lotus" and "the Sacred Lotus".

Claim 2 has been amended to provide the proper antecedent basis. Applicant's attorney believes these amendments resolve the concerns of the examiner, and requests reconsideration of the rejection under this section.

Double Patenting Rejection & Responsive Arguments

The examiner has rejected claims 1-15 under this section, on the ground of nonstatutory obviousness-type double patenting and being unpatentable over claims 1-11 and 13-15 of U.S. Patent No. 6,602,526 ("526 Patent"). The examiner asserts that while the claims are not identical, they are not patentably distinct from each other because the instant claims are drawn to an oral composition comprising Lotus seed extract with a compatible vehicle for oral application.

Applicant's attorney believes that the amendments to the present claims leave the claims as patentably distinct from the claims of the '526 Patent. The amendments to the present claims limit

the claims to topical applications that were not claimed in the '526 Patent, and that are patentable over the '526 Patent. Applicant's attorney requests the examiner reconsider this rejection in light of the present amendments.

35 U.S.C. §102 Rejection & Responsive Arguments

The examiner has rejected claims 1-15 under this section, subparagraph (b) as being anticipated by anticipated by U.S. Patent Application Publication 2002/0098253 ("253 Publication"). The applicant's attorney would respectfully submit that the predicate for the above rejection is rendered moot by claim amendment. The presently claimed invention is not the same as the invention of the '253 Publication.

The examiner represents that the '253 Publication anticipates the claims by teaching therapeutic oral and topical compositions of Sacred Lotus Seed (Methyltransferase) in dietary supplements in tablet form, which is a compatible vehicle for oral application. The examiner further represents that the composition of the '253 Publication combines Sacred Lotus seeds with additional antioxidants such as Vitamin E, and minerals such as copper, iron and manganese.

To anticipate a claim, the reference must teach every element of the claim. MPEP § 2131. It is respectfully submitted that the cited references do not teach every element of the claims at issue, as amended by this Amendment Response. The '253 Publication does not teach of every element of the claims of the present application.

The '253 Publication makes no teaching of a topical composition including Sacred Lotus Seed. The '253 Publication indicates that the oral composition taught can be taken alone, or in combination with topical treatments different from the oral composition of the '253 Publication [Par. 0060 of the '253 Publication]. The '253 Publication makes no teaching a topical form of the composition of the '253 Publication. The current claims as amended claim only a topical form of the composition taught by the present patent application.

The '253 Publication further does not teach of using the combination of two portions of a Lotus plant, as is claimed by the present claims as amended. The present application teaches and claims compositions that contain two forms of the lotus plant, including the extract of a seed of a lotus plant and the extract of a flower of a lotus plant.

Applicant's Attorney respectfully requests that the examiner reconsider the rejections under this section in light of the amendments to the present claims. The '253 Publication does not teach of every element of the amended claims of the present application.

35 U.S.C. §103 Rejection & Responsive Arguments

The examiner has rejected claims 1-15 under this section, subparagraph (a) as being unpatentable over U.S. Patent Application Publication 2002/0098253. The examiner represents that the '253 Publication teaches therapeutic oral and topical compositions of Sacred Lotus Seed (Methyltransferase) in dietary supplements in tablet form. The examiner further represents that it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a therapeutic Sacred Lotus Seed extract composition based upon the beneficial teachings provided by the '253 Publication, and the adjustment of particular conventional working conditions is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

The applicant's attorney respectfully suggests that the examiner may have misinterpreted the teachings of the '253 Publication. The '253 Publication does not teach of any topical composition. As stated earlier, the '253 Publication indicates that the oral composition taught within the '253 Publication can be taken alone, or in combination with topical treatments different from the oral composition of the '253 Publication [Par. 0060 of the '253 Publication]. The '253 Publication does not in itself teach of a topical composition.

Furthermore, the inventor of the '253 Publication suggested taking the oral composition of the '253 Publication in conjunction with other topical compositions, without teaching that the composition of the '253 Publication be administered as a topical formulation itself. This in itself shows that it was not obvious to the inventor, as one of ordinary skill in the art, that the composition of the '253 Publication be prepared as a topical formulation.

The '253 Publication also contains no teaching of combining two portions of the Lotus plant. The present application currently claims a composition that claims a combination of the extract of a lotus seed and the extract of a lotus flower. The '253 Publication does not teach of the combination of two parts of the Lotus plant.

The applicant's attorney respectfully requests the examiner reconsider the rejection under this section in view of the amended claims.

Request for Reconsideration

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their

dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

Fee Determination Record

A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

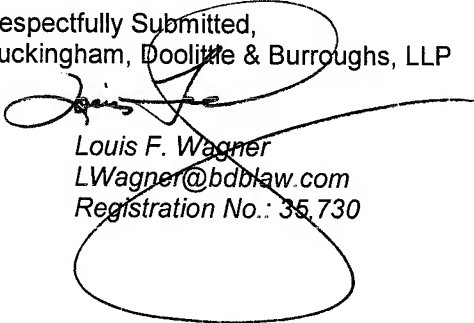
Conclusion

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

It is respectfully submitted that no new additional searching will be required by the examiner. A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

Buckingham, Doolittle & Burroughs, LLP
3800 Embassy Pkwy.
Akron, Ohio 44333
(330) 258-6453 (telephone)
(330) 252-5452 (fax)
Attorney Docket #: 61284-0006

Respectfully Submitted,
Buckingham, Doolittle & Burroughs, LLP



Louis F. Wagner
LWagner@bdblaw.com
Registration No.: 35,730